

REMARKS

Applicant respectfully acknowledges the Examiner's indication of allowable subject matter for claims 6-9 and 15-45. With respect to claims 1-5 and 10-14, Applicant hereby traverses the outstanding rejections and request reconsideration and withdrawal in view of the remarks contained herein. Claims 1-45 are pending in this application.

Rejection under 35 U.S.C. § 102 (Scherzer)

Claims 1-5 and 10-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,895,258 to Scherzer et al., (hereinafter, "Scherzer"). Claims 6-9 are objected to as being dependent from a rejected base claim.

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim," see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejection does not satisfy these requirements.

Claim 1 requires a speed estimator providing speed information with respect to a subscriber unit using corresponding array response vector information determined from a reverse link, and a beam selector providing selection of a beam configuration for use in a communication link with respect to the subscriber unit from a plurality of beam configurations using the speed information. The Examiner has cited column 7, lines 44-55 as describing this limitation. Applicant respectfully disagrees.

Scherzer only states that the "measured ARVs are preferably used in determining a fading rate profile, such as may be associated with movement speed." Column 7, lines 52-55. Further, Scherzer states that "fading rate information determined according to the present invention may be utilized in determining subscriber systems which are compatible for simultaneous transmission and/or for selecting antenna beams, or the characteristics thereof".

Column 7, lines 55-60. Scherzer never describes a speed estimator providing speed information using corresponding array vector response information, Scherzer merely states that a fading rate profile may be associated with movement speed. A fading rate profile, therefore, is not a speed estimator providing speed information as required by claim 1.

The Examiner appears to agree with this point by stating in the reasons for the indication of allowable subject matter with respect to claim 44: “the use of speed information, especially speed information gathered from the array response vector information was neither found, suggested or made evident by the prior art.

As Scherzer does not disclose a speed estimator providing speed information using corresponding array vector response information, Scherzer does not discloses each and every limitation of claim 1 as required under 35 U.S.C. § 102(e).

Claims 2-14 depend directly from base claim 1, and thus inherit all limitations of the base claim. Claims 2-14, therefore, set forth features and limitations not recited by Scherzer for at least the reasons set forth above.

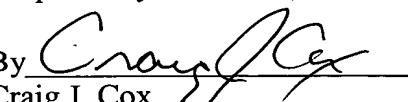
Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 65948/P067US/10315933 from which the undersigned is authorized to draw.

Dated: November 23, 2005

Respectfully submitted,

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